

**REMARKS**

Original claims 1-34 stand rejected on various grounds in the Nonfinal Office Action dated 21 April 2005. Reconsideration of the present application in view of the following comments is respectfully requested.

The Office Action Summary lists only claims 1-29 as pending; however, the body of the Office Action further discusses claims 30-34 (pp. 5, 8, and 9). It is believed that claims 1-34 are pending, which is consistent with the status for the prior Nonfinal Office Action and response thereto. Please clarify if a different status applies.

Claims 1-9 and 25-26 stand rejected under 35 USC §102(e) as being anticipated by U.S. Patent No. 6,515,591 to Lake ("Lake"). As indicated above, claims 30, 32, and 33 also appear to be rejected as being anticipated by Lake. This ground of rejection is respectfully traversed. The present application claims priority under 35 USC §120 to a number of applications, the earliest of which is commonly owned International Patent Application Number PCT/US99/16519 (the '519 application) filed 21 July 1999. The '519 application designated the United States of America. The text and figures of the '519 application are also included in the present application, although the numbering may differ in some cases. A copy of the '519 application as published is enclosed for convenience of reference.

The '519 application supports the claims rejected as being anticipated by Lake at least to the same extent that Lake discloses such claims, and the '519 application has an earlier filing date than any listed in connection with Lake. As such, Lake cannot be properly asserted against these claims. In the '519 application, Figs. 1-6 and accompanying text on pages 4-13 provide

several nonlimiting examples in this regard. Table I provides a more detailed feature-by-feature comparison for independent claim 1 as follows:



Claim 1	'519 Application
installing a plurality of pest control devices each including a respective bait for one or more species of pest, a respective pest sensor, and respective communication circuitry coupled to the respective pest sensor;	Fig. 1 showing pest control system 20 with pest control devices 110. Pest control devices 110 each have bait members 132, pest sensor 150, and circuitry 169 including communication circuit 160. See '519 application p. 4, line 10 - p. 6, line 20.
providing a stimulus to one of the pest control devices to cause the respective communication circuitry to output information about the respective pest sensor; and	An interrogator 30 generates an RF signal that provides stimulation to energize circuitry 169. See '519 application, p. 9, lines 17-27.
receiving information from the one of the pest control devices in response to the stimulus.	Pest control device 110 transmits information in response to the stimulation. See '519 application, p. 9, lines 28-32.

Table I

In the interest of brevity, feature-by-feature comparisons have not been provided for other claims because of the ease which such comparisons can be made based on Table I; however, additional comparisons will be provided upon request.

Besides the support provided by the '519 application, further reasons support the novelty of the rejected claims. For example, claims 6 and 32 recite that the bait includes a pesticide. The Lake reference only appears to reference using the termite detection device 10 to pinpoint where pesticide would be needed. No description in Lake could be found that discloses the bait as including such pesticide. Indeed, one typical approach is to detect first, and then apply a pesticide by other means. In contrast, bait members 132 of the '519 application are described as being a monitoring type without a pesticide or alternatively including a pesticide. See, '519

application, p. 4, line 29 through p. 5, line 4. In yet another instance, claim 26 includes monitoring circuitry with an activation device that includes a switch operable to activate monitoring. Lake lacks any express description of a switch in transponder circuitry 180. Accordingly, it is believed the rejection of claims 1-9, 25-26, 30, 32, and 33 based on Lake should be withdrawn.

Claims 16-24, 27-29, 31, and 34 stand rejected under 35 USC §103(a) as being unpatentable over Lake. This rejection is traversed. Support for these claims in the '519 application is at least as extensive as any disclosure found in Lake. Accordingly, this rejection should also be withdrawn.

In addition, several other grounds support the patentability of claims rejected on this ground. Claim 16 includes an activation device in the communication circuit. In the rejection of claim 16, the Office Action takes the position that because Lake's transponder is passive, some type of activation device would be obviously included [in the circuit] to activate it. However, activation of the termite detection device of Lake commences when it is externally powered by interrogator 45. As such, there is no need for and no disclosure of an activation device included in communication circuitry of a pest control device.

In another instance, claim 17 recites that the activation device includes a switch. The Office Action implies that the reference fails to disclose a switch, but a switch to activate the transponder circuit would be obvious anyway. This rejection is also improper for among the same reasons as the rejection of claim 16. Further it is noted that with respect to claim 26, the Office Action inconsistently asserts that Lake does disclose a switch. While it believed such disclosure is lacking, clarification for the record would be welcome.

A further instance supporting patentability arises in connection with the rationale rejecting claims 18 and 19. The Office Action explains that it would have been obvious to use a visual indicator in addition to the indicating device in Lake, such as a light emitting diode component, to provide indication to a user at the location where the sensor and bait is actually located because it provides indication to a user “just by looking at the device” at a local site where the termite control device is placed.

For the passively powered termite detection device of Lake, it is speculative whether power would be available of sufficient quantity and/or duration to provide for proper operation of a visual indicator. Indeed, those skilled in the art would be discouraged from burdening passive circuitry with additional power consuming parts, like visual indicators. In contrast, interrogator 45 would seem to be a much better candidate for providing a visual indication. Thus patentability of claims 18 and 19 is further sustained.

In still another instance, the features of claim 21 and claim 29 each include an LED, a switch, and a power source, among other things. The use of an LED is additionally patentable for at least the reasons stated in connection with the rejection of claims 18 and 19. Further reasons supporting patentability relating to the switch were explained in connection with claim 17. Moreover, the inclusion of a power source is directly contrary to the use of Lake’s passive transponder that depends on the interrogator for power. “A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention.” Manual of Patent Examining Procedure (MPEP) §2141.02 (citing W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983)).

In yet another instance, the bait includes pesticide for the invention defined by claim 23. Lake does not disclose a pesticide bait usage of the type asserted, as explained in connection

with the rejection of claims 6 and 32. Thus, numerous reasons support the nonobviousness of claims that were rejected over Lake.

Claims 10-15 stand rejected under 35 USC 103(a) as being unpatentable over Lake in view of U.S. Patent No. 5,874,726 to Creeger. This rejection is also traversed. Support for these claims in the '519 application is at least as extensive as any disclosure of the same in Lake. Accordingly, this ground of rejection should also be withdrawn.

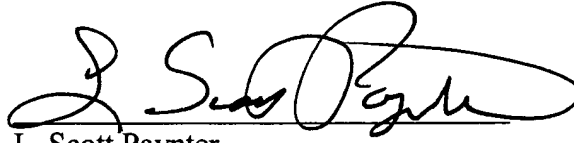
Moreover, further reasons support patentability of these claims. For example, the Creeger reference is an active device as opposed to the passive device of Lake. The switch in Creeger is provided to selectively activate a battery so that power can be conserved when it is not needed. One skilled in the art would not be motivated to incorporate the internal power circuitry of Creeger into a device that is passive and uses an external source of activation and power like interrogator 45. "The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification." In re Fritch, 23 USPQ2d, 1783-84 (Fed. Cir. 1992). As a corollary, the patent office has recognized that "[i]f the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious." MPEP §2143.01.

In another example, additional grounds support the patentability of claims 12 and 14 for at least the reasons explained in connection with claims 18 and 23, respectively.

In view of the foregoing, it is believed that claims 1-34 are in condition for allowance. Reconsideration of the present application as amended is respectfully requested. The Examiner

is encouraged to contact the undersigned to resolve any outstanding matters concerning the present application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "L. Scott Paynter", written over a horizontal line.

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